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UNCLAS SECTION 01 OF 04 ANKARA 002733

SIPDIS

DEPT FOR EB/TPP/MTA/IPE - SWILSON/JURBAN AND EUR/SE DEPT
PASS USTR FOR JCHOE-GROVES
DEPT PASS LIBRARY OF CONGRESS FOR STEPP
DEPT PASS USPTO FOR JURBAN AND EWU
USDOC FOR ITA/MAC/DDEFALCO AND JBOGER

SENSITIVE

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [TU](#) [USTR](#)

SUBJECT: NEW IPR CERTIFICATION REGULATION TO HELP COMBAT
PIRACY

Summary

1. (SBU) The GOT issued a new certification regulation last month, requiring all businesses involved in the recording, sale, reproduction and distribution of copyright materials to be certified from the Ministry of Culture and Tourism (MOCT). The regulation also imposes a Source Identification (SID) Code requirement on production and recording facilities. The new MOCT Acting Copyrights Director General said the new regulation was a significant tool for the GOT in its efforts to curb piracy. End Summary.

2. (SBU) The Ministry of Culture and Tourism issued a new certification regulation on April 18, which imposes a certification requirement on businesses undertaking distribution, recording, reproduction and sale of materials containing intellectual property and works of art. The regulation also defines SID codes and requires production and recording facilities to submit SID code information in their certificate applications. Production and recording facilities are given a special status in the regulation, and will be subject to an inspection by the Ministry and related professional associations prior to the issuance of certificates. These facilities will also be required to inform the Ministry about changes in activity, equipment and capacity, and to include their SID code information in the materials they produce. The MOCT's provincial directorates will issue and renew certificates, as well as audit the facilities. The Ministry will be able to cancel certificates of businesses if, at any point, it detects a divergence from the activities contained in the certificate application.

3. (SBU) The new Ministry of Culture and Tourism Copyrights Department Acting Director General Tahsin Yilmaz told Econoff and Econ Specialist on May 4 that the MOCT was disappointed that Turkey remained on the U.S. Special 301 Priority Watch List for 2005. Yilmaz maintained that the certification regulation would make a significant contribution to the Ministry's efforts to control piracy. Yilmaz said a total of 200,000 businesses would receive certificates with this regulation and would be included in the Ministry of Culture's database. The Ministry of Culture has already placed computers in the provincial directorates in all cities and established a network connection with the Ministry, so that the Ministry can instantly track the new certificates issued for businesses throughout Turkey. Yilmaz pointed out the special status given to the production and recording facilities in this regulation, and said the certification and auditing mechanisms would dramatically improve the Ministry's ability to combat pirate production.

4. (SBU) Begin Text International Intellectual Property Alliance (IIPA) Translation of Certification Regulation:
From: The Ministry of Culture and Tourism:
Regulation on the Certification of Businesses
Undertaking the Distribution or the Recording,
Reproduction and Sale of Materials on which Intellectual
Property and Works of Art are Fixed
Aim

Article 1 - This regulation aims to lay down principles and procedures for the certification on a reimbursable basis by the Ministry of the business premises which produce, import or record on, reproduce and sell or distribute and present to the public through any means, materials used in the fixing and reproduction of intellectual property and works of art, with a view to protecting and effectively monitoring intellectual property rights.

Scope

Article 2 - This regulation entails the principles and procedures for certification and the obligations of the premises to which certificates shall be issued.

Basis

Article 3 - This regulation has been developed based on the amended Article 44 and additional Article 10 of Law No. 5846 on Intellectual Property and Works of Art dated 5.12.1951.

Definitions

Article 4 - Definitions used in this regulation shall have the following meanings;

Ministry: Culture and Tourism Ministry,

Law: Law No. 5846 on Intellectual Property and Works of Art dated 5.12.1951,

Recording Facility (Production Plant): Premises with technical equipment where fixing is applied to cassettes in the form of magnetic spools of tape or digitally fixed through means of injection on fixing materials such as CDs, VCDs and DVDs reproduced from specially produced moulds.

SID code: Source identification code given by IFPI (International Federation of Phonogram Industry) enabling the identification of premises producing and recording on fixing materials such as CDs, VCDs and DVDs.

Carrying material: Materials such as cassettes, computer diskettes, CDs, VCDs, DVDs and the like,

Chain company: Businesses with ten or more branches in the country they are operating,

Small business: Premises employing between one and forty-nine employees,

Medium sized business: Premises employing between fifty and two hundred and fifty employees,

Large business: Premises employing more than 250 employees,

Mandatory Certification

Article 5 - Business premises producing or importing materials used for fixing and reproducing intellectual property and works of art, those which fix, reproduce and sell these materials or distribute them and present them to the public through any means are obligated to obtain a certificate from the Ministry certifying their activity.

a) Premises producing, importing, distributing or selling empty fixing materials,

b) Recording facilities undertaking the fixing and reproduction of productions entailing intellectual property and works of art,

c) Printing houses and publishers which reproduce, distribute or sell intellectual property and works of art,

d) Movie theatres and similar places undertaking public display and transmission of cinematographic films,

e) Premises undertaking sale, distribution, importation and marketing of intellectual property and works of art and fixing materials concerning productions entailing intellectual property and works of art through any means and techniques including digital transmission and those that rent these out.

Certification

Article 6 - Certification is undertaken by the provincial culture and tourism directorates. All business premises requesting certification apply by attaching to the application form they will obtain from the culture and tourism directorates of the provinces they are operating in a notarised copy of their business operating licence, a bank transfer voucher indicating the payment of the certification fee; and those businesses that rent out reproduced copies of intellectual property and works of art apply by attaching to their application form an authorisation document indicating the transfer of rental rights. The application form shall have the following information;

a) The name of the business premise and its authorised official and contact information,

b) Operating licence number issued by the Chamber of Commerce or Chamber of Small Businesses,

c) Tax number,

d) For premises producing or fixing CDs, VCDs, DVDs and the like:

SID Code,

e) and other information that may be deemed necessary by the Ministry,

Other documents the Ministry may request relevant unions, associations and the like to provide may also be requested during the application for certification.

Premises operating within the state enterprises or in public or private educational institutes will only have to provide a copy of the operating licence granted by the relevant body and a bank transfer voucher indicating the certification fee has been paid.

A joint application can be lodged in the case of chain businesses for branches in the same province, however, a separate certificate on a reimbursable basis shall be

provided for each branch of the business.

In the event of the reproduced copies of a work of art being sold by the author of the work there is no requirement for a certificate.

Both premises that have been certified and the authors of the works in question cannot sell these works in locations banned by article 81 of the Law.

In the event of a change in address, field of activity or line of business, the existing certificates are returned and new certificates are obtained. Certificates are produced to bear the names of the holders and are non-transferable.

Certificate features and the information they must entail

Article 7 - In the certificates to be issued by the Ministry the name and address of the business premise, the name surname or title of the proprietor, the business tax number, the business field of activity, the type of certificate, its date of issue and validity as well as the number of the certificate are indicated. The said certificates are renewed in every three years. Documents indicated in Article 6 of this Regulation are produced during renewal of certification.

Obligations of certified premises

Article 8 - Certified premises are obligated to;

- a) to indicate the certificate number on the introductory page of the non-periodical publications, fixing materials and digital transmission medium,
- b) display the certificates in a prominent location in the business premise,
- c) write down the certificate number on invoices and delivery vouchers,
- d) produce certificates and other relevant documentation during inspections,
- e) In case of direct sales to have sales personnel or distribution vehicles have a copy of the certificate approved and stamped by the provincial culture and tourism directorate.

Special provisions concerning fixing facilities

Article 9 - Those fixing facilities where intellectual property and works of art are fixed and reproduced are located in Istanbul shall obtain their certificates from the Copyrights and Cinematography Directorate while those in other provinces shall obtain theirs from the General Directorate of Copyrights and Cinematography. For these facilities to obtain a certificate, in addition to those listed in Article 6, they must also produce the following:

- a) Report from either the Industry and Trade Provincial Directorate or the Turkish Standards Institute indicating their capacity and that they have the necessary technical equipment,
- b) An itemised list of the technical equipment at the premises as well as copies of invoices or sale transfer documents of the same,
- c) SID code document.

Following the lodging of an application with the above mentioned documents a commission formed by the Ministry comprising at least three members including representatives from the Ministry and the relevant professional associations shall conduct an inspection to ascertain that the premises have quality control and test units and in the event of determining compliance with the necessary requirements grant the certificate to the fixing facility.

In addition to their obligations concerning certification, the recording facilities are also obligated to inform the General Directorate of all changes in the type of activity, equipment and capacity within ten days and to place the SID code and the certificate numbers on the fixing materials.

Exhibitions and fairs, festivals and similar activities

Article 10 - In the event premises which have been certified within the provisions of this regulation open stands at fairs, festivals and areas where similar activities are organised for the sale of books and fixing materials entailing intellectual property and works of art, they may undertake sale activities throughout the opening period of the festivals and certified fairs while for a maximum of ten days at other such activities. In order to do this, a copy of the certificate approved and stamped by the provincial culture and tourism directorate indicating the name and date of the activity in question shall be displayed at a prominent location in the stand throughout the activity. No extra fees are charged for this procedure.

Types of Certificates and Fees

Article 11 - Types of certificates are determined by the Ministry by taking into consideration the fixing, reproduction, rental and distribution activities.

The certificate fees for premises undertaking fixing, reproduction, rental and distribution activities shall be determined by the Ministry. This fee shall be calculated by multiplying the government employee monthly salary coefficient by the government employee basic salary indicators between (1000) and (5000).

The said fees are deposited in the Ministry of Culture and Tourism Central Accountancy Account and credited as revenue to the general budget. Necessary budget allowances to meet costs of printing certificates, activities and procedures concerning the certification procedure as well as the fight against intellectual piracy are included in the budget.

Inspections concerning certificate implementation and sanctions

Article 12 - The inspection of whether premises that are obligated to obtain a certificate in accordance with this regulation have done so is undertaken by local authorities in the provinces while the inspection of the fixing facilities is undertaken by the Ministry.

Local authorities impose administrative fines indicated in the additional Article 10.1.2 of the Law on premises determined as a result of inspections to be operating without having obtained the obligatory certificates.

The fact that a fine has been paid does not eliminate the obligation to obtain the certification.

Annulment of the certification

Article 13 - In the event it is determined that the certified facilities no longer meet the requirements for obtaining certificates the certificates of such facilities are annulled by the Ministry.

Moreover, in the event there exists a finalised court conviction arising from having violated the law, certificates of such premises are annulled upon a notification made to the Ministry by the rights owners, professional associations of the relevant field of activity or local authorities.

Provisional Article 1 - Premises and facilities obligated to obtain a certificate per provisions of this regulation and those that have formerly received recording facility adequacy certificate are obligated to obtain a certificate within six months of the date this regulation comes into force.

Validity

Article 14- -This regulation which has been developed by receiving inputs from the Ministry of Finance and Financial Court of Appeals shall go into effect on the date of its publication.

Execution

Article 15 - The provisions of this regulation are executed by the Minister of Culture and Tourism.

Edelman